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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,503	07/13/2005	Volker Mittendorf	12810-00379-US	5918
23416	7590	10/05/2007	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			BAGGOT, BRENDAN O	
P O BOX 2207			ART UNIT	PAPER NUMBER
WILMINGTON, DE 19899			1638	
MAIL DATE		DELIVERY MODE		
10/05/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/523,503	MITTENDORF ET AL.
Examiner	Art Unit	
Brendan O. Baggot	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,6-16,20-22,24-40 and 42 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-3,6-16,20-22,24-40 and 42 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 1 or encoding SEQ ID NO: 2  
Group 2, claim(s) 1-3, 6-16, 20-22, 24-25, 30 and 31, drawn to SEQ ID NO: 3 or encoding SEQ ID NO: 4.  
Group 3, claim (s) 1-3, 6-16, 20-22, 24-25, 34 and 35, drawn to SEQ ID NO: 5 or encoding SEQ ID NO: 6  
Group 5, claim(s) 1-3, 6-16, 20-22, 24-25, 34 and 35, drawn to SEQ ID NO: 9 or encoding SEQ ID NO: 10  
Group 6, claim (s) 1-3, 6-16, 20-22, 24-25, 30 and 31, drawn SEQ ID NO: 11 or encoding SEQ ID NO: 12  
Group 7, claim (s) 1-3, 6-16, 20-22, 24-25, 34 and 35, drawn to SEQ ID NO: 13 or encoding SEQ ID NO: 14  
Group 8, claim(s) 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 15 or encoding SEQ ID NO: 16  
Group 9, claim(s) 1-3, 6-16, 20-22, 24-25, 34 and 35, & drawn to SEQ ID NO: 17 or encoding SEQ ID NO: 18  
Group 10, claim(s) 1-3, 6-16, 20-22, 24-25, 28 and 29, drawn to SEQ ID NO: 19 or encoding SEQ ID NO: 20  
Group 11, claim(s) 1-3, 6-16, 20-22, 24-25, 34 and 35, drawn to SEQ ID NO: 21 or encoding SEQ ID NO: 22  
Group 12, clam(s) 1-3, 6-16, 20-22, 24-25, 34 and 35, drawn to SEQ ID NO: 23 or encoding SEQ ID NO: 24  
Group 13, claim(s) 1-3, 6-16, 20-22, 24-25, 34 and 35, drawn to SEQ ID NO: 25 or encoding SEQ ID NO: 26  
Group 14, claim (s) 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 27 or encoding SEQ ID NO: 28  
Group 15, claim (s) 1-3, 6-16, 20-22, 24-25, 29 and 30, drawn to SEQ ID NO: 29 or encoding SEQ ID NO: 30  
Group 16, claim(s) 1-3, 6-16, 20-22, 24-25, 36-40, 42, drawn to SEQ ID NO: 31 or encoding SEQ ID NO: 32

Art Unit: 1638

Group 17, claim(s) 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 33 or encoding SEQ ID NO: 34

Group 18, claim (s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 35 or encoding SEQ ID NO: 36

Group 19, claim(s) 1-3, 6-16, 20-22, 24-25, 32 and 33, drawn to SEQ ID NO: 37 or encoding SEQ ID NO: 38

Group 20, claim(s) 1-3, 6-16, 20-22, 24-25, 32 and 33, drawn to SEQ ID NO: 39 or encoding SEQ ID NO: 40

Group 21, claim (s) 1-3, 6-16, 20-22, 24-25, 30 and 31, drawn to SEQ ID NO: 41 or encoding SEQ ID NO: 42

Group 22, claim(s) 1-3, 6-16, 20-22, 24-25, 28 and 29, drawn to SEQ ID NO: 43 or encoding SEQ ID NO: 44

Group 23, claim(s) 1-3, 6-16, 20-22, 24-25, 28 and 29, drawn to SEQ ID NO: 45 or encoding SEQ ID NO: 46

Group 24, claim(s) 1-3, 6-16, 20-22, 24-25, 47 and 48, drawn to SEQ ID NO: 47 or encoding SEQ ID NO: 48

Group 25, claim(s) 1-3, 6-16, 20-22, 24-25, 32 and 33, drawn to SEQ ID NO: 51 or encoding SEQ ID NO: 52

Group 26, claim(s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 53 or encoding SEQ ID NO: 54

Group 27, claim(s) 1-3, 6-16, 20-22, 24-25, 30 and 31, drawn to SEQ ID NO: 55 or encoding SEQ ID NO: 56

Group 28, claim(s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 57 or encoding SEQ ID NO: 58

Group 29, claim(s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 59 or encoding SEQ ID NO: 60

Group 30, claim(s) 1-3, 6-16, 20-22, 24-25, 28 and 29, drawn to SEQ ID NO: 61 or encoding SEQ ID NO: 62

Group 31, claim(s) 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 63 or encoding SEQ ID NO: 64

Group 32, claim (s) 1-3, 6-16, 20-22, 24-25, 32 and 33, drawn to SEQ ID NO: 65 or encoding SEQ ID NO: 66

Group 33, claim(s) 1-3, 6-16, 20-22, 24-25, 30 and 31, drawn to SEQ 113 NO: 67 or encoding SEQ ID NO: 68

Group 34, claim (s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 69 or encoding SEQ ID NO: 70

Group 36, claim(s) 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 73 or encoding SEQ ID NO: 74

Group 37, claim(s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 75 or encoding SEQ ID NO: 76.

Group 38, claim(s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 77 or encoding SEQ ID NO: 78

Group 39, claim(s)- 1-3, 6-16, 20-22, 24-27, drawn to SEQ ID NO: 79 or encoding SEQ ID NO: 80

Group 40, claim(s) 1-3, 6-16, 20-22, 24-25 and 36-40, 42, drawn to SEQ ID NO: 81 or encoding SEQ ID NO: 82

The inventions listed as Groups I-XV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: In this case, the claims lack the same corresponding special technical feature because Herzog et al teaches SEQ ID NO: 1 encoding SEQ ID NO: 2. (Herzog et al (GenEMBL Accession U11764)).

According to PCT Rule 13.2, the groups lack unity of invention with one another when they do not share all the special or corresponding technical features. In this case, the claims lack the same special technical feature.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicants are reminded that nucleotide sequences encoding different proteins or comprising different regulatory sequences are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary,

Art Unit: 1638

each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq.

Applicant is required to select a single nucleotide sequence. This requirement is not to be construed as a requirement for an election of species, since each nucleotide sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brendan O. Baggot whose telephone number is 571/272-5265. The examiner can normally be reached on Tuesday through Thursday, 10:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571/272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bob

DAVID H. KRUSE, PH.D.  
PRIMARY EXAMINER

